



September 11, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Notice of *Ex Parte* Filing
MB Docket No. 12-108

Dear Ms. Dortch:

The National Association of the Deaf (NAD), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Association of Late-Deafened Adults, Inc. (ALDA), Hearing Loss Association of America (HLAA), Cerebral Palsy and Deaf Organization (CPADO) and the Gallaudet University Technology Access Program (Gallaudet TAP) (collectively, the “Consumer Groups and Gallaudet TAP”) respectfully offer our perspective on recent filings in the above-referenced proceeding by the Consumer Electronics Association (CEA), the American Foundation for the Blind (AFB), DISH, EchoStar Technologies, DIRECTV, the National Cable & Telecommunications Association (NCTA), and the Telecommunications Industry Association (TIA).¹

We believe that it would be inappropriate to require a consumer to file a request before receiving closed captioning access on MVPD-provided navigation devices. The “upon request” language of Section 205(a) of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) is not referenced in amended Section 303(bb)(2) of the Communications Act of 1934, the subsection of the statute that requires navigation devices to make closed captioning functionality accessible through the provision of a mechanism reasonably comparable to a button, key, or icon. Accordingly, the Commission should only permit MVPDs to provide accessibility upon request in connection with the audible accessibility requirements of Section 303(bb)(1), which specifically includes an “upon request” provision.

¹ *In the Matter of Accessibility of User Interfaces, and Video Guides and Menus*, Notice of Proposed Rulemaking, MB Dkt. No. 12-108 (rel. May 30, 2013) (“NPRM”); CEA and AFB Aug. 16, 2013 filing at <http://apps.fcc.gov/ecfs/comment/view?id=6017463341>; AFB Aug. 22, 2013 filing at <http://apps.fcc.gov/ecfs/comment/view?id=6017464475>; DISH and EchoStar Aug. 21, 2013 filing at <http://apps.fcc.gov/ecfs/comment/view?id=6017464316>; NCTA Sept. 3, 2013 filing at <http://apps.fcc.gov/ecfs/document/view?id=7520941728>; DIRECTV Sept. 5, 2013 filing at <http://apps.fcc.gov/ecfs/document/view?id=7520942304>; TIA Sept. 5, 2013 filing at <http://apps.fcc.gov/ecfs/document/view?id=7520942278>.

A literal interpretation of Section 205(b)(3), which states that “an entity shall only be responsible for compliance with the requirements added by this section with respect to navigation devices that it provides to a requesting blind or visually impaired individual,” would absurdly permit only people who are blind or visually impaired (and not those who are deaf or hard of hearing) to request a device with an accessible closed captioning button—which would effectively read the closed captioning button requirement out of Section 205 entirely. Doing so would necessitate reaching the illogical conclusion that Congress intended to require MVPDs to provide closed captioning buttons only to viewers who are blind rather than to viewers who are deaf or hard of hearing—even though viewers who are deaf or hard of hearing are the primary intended beneficiaries of the CVAA’s closed captioning requirements.

Because Section 303(bb)(1) plainly contemplates that people who are blind or visually impaired will request accessible navigation devices via the inclusion of the “upon request” language that isn’t present in the closed captioning button requirement of section 303(bb)(2), it is clear that Congress did not intend Section 205(b)(3) to limit the broad coverage of Section 303(bb)(2). Construing Section 205(b)(3)’s “requesting” language narrowly is consistent with the CVAA’s broad goals of making video programming and the apparatuses used to view it accessible to all Americans. Moreover, because MVPD-provided apparatuses, applications, plug-ins, and other software must render or pass through captions pursuant to Section 202 and 203 of the CVAA, it would be at odds with the clear intent of Congress in enacting the CVAA to exempt MVPDs from enabling universal access to those required captions.

Additionally, according to the August 17, 2012 DiMA order, Video Programming Distributors (“VPDs”) must comply with the requirements for display of captions set forth in Section 79.103(c) of the Commission’s rules by January 1, 2014.² These rules contain a list of ten specific capabilities that apparatus subject to the section must implement, including requirements related to “presentation, character color, character opacity, character size, fonts, caption background color and opacity, character edge attributes, caption window color, language and preview and setting retention.”³ We encourage the Commission to be mindful of this approaching deadline and make sure that VPDs comply with these requirements, including by providing user interfaces that provide viewers access to the required capabilities.

In situations where the CVAA may lack clarity, the Consumer Groups and the Gallaudet TAP urge the Commission to strongly consider the goals of the CVAA. The purpose of the CVAA was to make modern communications and video programming accessible to people with disabilities.⁴ Congress recognized that many of the benefits of modern technology were sometimes not accessible to people with disabilities and sought to remedy this growing divide with the passing of the CVAA.⁵ Thus when there is inconsistency, the Commission should strive to accomplish the goals of Congress.

² *In the Matter of Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum and Order, MB Dkt. No. 11-154 (rel. Aug. 17, 2012).

³ *Id.* at ¶ 4.

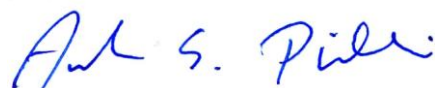
⁴ S. Rep. No. 111-386, at 1 (2010).

⁵ *Id.* at 1-2.

The Commission should consider the effects of its rules on users with disabilities. To this day, many people who are deaf or hard of hearing continue to have difficulties accessing closed captioning controls on MVPD-provided products such as the infamous cable box which must first be first “turned off” before the closed captioning mechanism can be accessed through a special menu feature hidden in the box’s firmware. On other devices we have to navigate complex menu settings in order to find the closed captioning control or configuration settings. While many of us are eventually able to learn how to access our own personal devices at home, we often struggle trying to activate the closed captioning on MVPD-provided devices that we're not familiar with—such as when staying at hotels, visiting friends and family, or even trying to help a waiter or bartender activate the captions on a restaurant television. Requiring devices to include captioning controls by default will ensure that people who are deaf or hard of hearing can always access captions, even when they are away from their own homes.

Our organizations are often contacted by users asking for help accessing the closed captioning control on MVPD-provided devices. Every day we see the magnitude of this problem and this is the very reason that many of our organizations, as part of the Coalition of Organizations for Accessible Technology, pushed to mandate easy access to the closed captioning control and configuration in the CVAA. We cannot begin to imagine how difficult it would have been if the Television Decoder Circuitry Act of 1990 only required televisions include decoders "upon request." The Commission needs to give full effect to the language of the CVAA and when there is ambiguity, strive to accomplish Congress' goal of improved access for people with disabilities to video programming.

Respectfully submitted,



Andrew S. Phillips, Esq.
Policy Attorney
National Association of the Deaf
8630 Fenton Street, Suite 820
Silver Spring, MD 20910

Cheryl Heppner
Vice Chair
Deaf and Hard of Hearing Consumer
Advocacy Network
3951 Pender Drive, Suite 130
Fairfax, VA 22010

Claude L. Stout
Executive Director
Telecommunications for the
Deaf and Hard of Hearing, Inc.
8630 Fenton Street, Suite 121
Silver Spring, MD 20910

Anna Gilmore Hall
Executive Director
Hearing Loss Association of America
7910 Woodmont Avenue, Suite 1200
Bethesda, MD 20814

Christian Vogler, Ph.D.,
Director, Technology Access Program
Gallaudet University
800 Florida Ave., N.E., SLCC 1116
Washington, DC 20002

Brenda Estes
President
Association of Late-Deafened Adults, Inc.
8038 MacIntosh Lane, Suite #2
Rockford, IL 61107

Mark Hill
President
Cerebral Palsy and Deaf Organization
1219 NE 6th Street #219,
Gresham, OR 97030